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Where the plaintiff voluntarily risks his own life in order to save the lives of others imperiled by the wrongful conduct of the defendant, his right of action rests upon the ground that such intervention is foreseeable. Consequently the courts recognize a duty running to the plaintiff to avoid causing such peril to the lives of others as to invite humane rescuers to risk their own safety. *Eckert v. Long Island R. Co.*, 43 N. Y. 502; *Dixon v. New York, N. H. & H. Ry. Co.*, 207 Mass. 126, 92 N. E. 1030. See 24 HARV. L. REV. 407. It is generally said, furthermore, that the rescuer's conduct does not necessarily involve contributory negligence and that he will be denied recovery only if he acted so rashly or recklessly that a jury would deem him unreasonable in taking the risk. *Eckert v. Long Island R. Co.*, *supra*; *Pennsylvania Co. v. Langendorff*, 48 Oh. St. 316, 28 N. E. 172. *Contra, Anderson v. Northern Ry.*, 25 U. C. C. P. 301. *Cf. Blair v. Grand Rapids L. & D. R. Co.*, 60 Mich. 124, 26 N. W. 855. In the second principal case, the court relied in part upon the doctrine of "last clear chance." This seems erroneous, in view of the rescuer's ability to step back from the tracks at a time when the defendant is no longer able to avoid the accident. See 27 HARV. L. REV. 757. In both cases there may be some question upon the facts whether the plaintiff was trying to save life and not merely attempting to avoid the destruction of property. See *Condiff v. Kansas City, etc. R. Co.*, 45 Kan. 256, 25 Pac. 562. See 24 HARV. L. REV. 406. But on this point the cases show a tendency to allow recovery wherever the plaintiff's conduct can reasonably be explained as an effort to prevent loss of human life.

PAROL EVIDENCE — SUBSTANTIVE LAW EXPRESSED IN TERMS OF EVIDENCE — CONTRACTS: ADDITION OF A TERM IMPLIED BY CUSTOM. — The plaintiff by a written contract licensed the defendant to perform a certain play in the United States and Canada, and brought suit for the royalties accruing under the contract. The defendant offered parol evidence to show a custom in the theatrical business that such licenses were in fact understood to be exclusive. *Held*, that the evidence was properly excluded. *Hart v. Cort*, 151 N. Y. Supp. 4 (App. Div.).

It is a well-established principle that parties to a contract on a subject matter concerning which known usages prevail, are deemed to have incorporated such usages by implication into their agreement, if nothing is said to the contrary. *Brown v. Byrne*, 3 E. & B. 703; *Newhall v. Appleton*, 114 N. Y. 140, 21 N. E. 105; *Atkinson v. Truesdell*, 127 N. Y. 230, 27 N. E. 844. But in determining what was the understanding of the parties the court is limited by the rule that whatever by the terms of the writing the parties have either expressly or impliedly excluded, cannot be considered a part of the contract, and it requires no rule of evidence to render such matter incompetent. This should be, it is submitted, the criterion in determining the admissibility of custom and usage. See *Webb v. Plummer*, 2 B. & Ald. 746, 750; 4 WIGMORE, EVIDENCE, § 2430. Therefore in the principal case, since it does not appear that the writing purported to dispose of the question raised by the evidence offered, it would seem that the custom should be admissible to enable the court to interpret the meaning of the contract. Upon the whole subject the authorities are somewhat confused, but better reason and the weight of authority seem to support the view of the dissenting judges. See 6 HARV. L. REV. 325, 418.

RULE AGAINST PERPETUITIES — GENERAL AND PARTICULAR INTENT IN CONNECTION WITH RULE. — The testator left family portraits to "the eldest of my sons who may be living at the decease of my wife and myself in trust to preserve and to be transferred at his death to my next eldest son then alive — and so on — through all my sons; and then to the eldest grandson then alive and at his death to the next eldest and so on through all the grandsons." The

plaintiff was alive at the testator's death and was the oldest grandson alive at the death of the first grandson to take. *Held*, that the plaintiff is entitled to the portraits. *Wentworth v. Wentworth*, 92 Atl. 733 (N. H.).

The court seems right in treating the plaintiff's interest as contingent. The gift is not one of a succession of life estates to named descendants, but rather a bequest to him who shall fulfill a certain description at a given moment, and until that moment arrives the person is unascertainable. At common law, therefore, limitations to grandsons other than the first one to take would be too remote, since the estates would not necessarily vest within the period of lives in being and twenty-one years. The court admits this, but says that the New Hampshire rule is to carry out the testator's intent as far as possible and hold the gifts good for the lives in being at the testator's death and twenty-one years thereafter. In an earlier case the same court changed a contingent gift to unborn grandchildren at forty into a gift to them at twenty-one and thus sustained the devise. *Edgerly v. Barker*, 66 N. H. 434, 31 Atl. 900. Professor Gray's criticism of that case makes further censure unnecessary. See 9 HARV. L. REV. 242; GRAY, RULE AGAINST PERPETUITIES, §§ 857-893. The principal case seems to adopt a still more pernicious rule, for while the interest might not have vested until after the prescribed period, the court holds it not too remote simply because it did in fact vest within a proper time.

TAXATION — COLLECTION AND ENFORCEMENT — EQUITY JURISDICTION. — The plaintiff, an unpaid holder of bonds of the defendant county, obtained judgment but not satisfaction in a United States District Court. A number of writs of mandamus issued commanding the proper county officers to raise a tax. These officials, however, either evaded service, or "wilfully and defiantly refused to obey," with the result that "the plaintiff is utterly remediless at law by mandamus or otherwise." The plaintiff thereupon asked that a commissioner, or receiver, or other officer, be appointed in equity to levy, collect, and pay over the tax. Missouri statutes in force at the time of the bond issue provided that in addition to regular taxes "no other tax for any purpose shall be assessed, levied, or collected" except by order of the circuit court of the county according to a prescribed procedure. MO. R. S., 1909, §§ 11416-7. *Held*, that the relief asked will not be given. *Yost v. Dallas County*, 35 Sup. Ct. 235.

A discussion of the jurisdiction of the courts to compel the exercise of the taxing power will be found in this issue of the REVIEW, p. 617.

TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO ADDRESSEE — DISCLOSURE OF MESSAGE: ILLEGAL TRANSACTIONS OF ADDRESSEE AS DEFENSE. — Two telegrams containing no imputation of immorality on their face were shown by the telegraph company's agent to friends of the addressee. One of the messages was also delivered unsealed to his mother, who read it. As a result of these disclosures it became known that the sender was a prostitute and that the addressee was her paramour. His consequent disrepute resulted in the loss of his position and other serious damages. He now sues the telegraph company. *Held*, that since the action is based on the addressee's own immoral transactions, it will be dismissed. *Western Union Tel. Co. v. McLurin*, 66 So. 789 (Miss.).

The addressee of a telegram has a right of action against the telegraph company for negligence in regard to the transmission of the message. *Western Union Tel. Co. v. Allen*, 66 Miss. 549, 6 So. 461; *Herron v. Western Union Tel. Co.*, 90 Ia. 129, 57 N. W. 696; *Contra, Playford v. United Kingdom Electric Tel. Co.*, L. R. 4 Q. B. 706. An addressee may also recover damages for the disclosure of the message. *Cock v. Western Union Tel. Co.*, 84 Miss. 380, 36 So. 392. See *Barnes v. Postal Telegraph-Cable Co.*, 61 N. C. 150, 154. In either case his